

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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SCOTT CAWTHORN,

Plaintiff,

-against-

CONG TY CO PHAN TAP DOAN APEC  
VIET NAM,

Defendant.  
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22-CV-7396 (VSB)

**ORDER**

VERNON S. BRODERICK, United States District Judge:

On August 30, 2022, Plaintiff commenced an action against Cong Ty Co Phan Tap Doan Apec Viet Nam. (Doc. 1.) Plaintiff asserts that defendant is a resident of Vietnam. (Doc. 1 at ¶ 3.) Thus, while the 90-day deadline for service under Fed. R. Civ. 4(m) has elapsed, this deadline does not apply to service on a foreign defendant “and the Federal Rules include no alternative deadline.” *In re S. Afr. Apartheid Litig.*, 643 F. Supp. 2d 423, 433 (S.D.N.Y. 2009). However, failure to attempt service on a foreign defendant remains grounds for dismissal. *See, e.g., USHA (India), Ltd. v. Honeywell Int’l, Inc.*, 421 F.3d 129, 134 (2d Cir. 2005). Thus, “when the foreign country exception does apply, the court uses a flexible due diligence standard to determine whether service of process was timely.” *Astor Chocolate Corp. v. Elite Gold Ltd.*, 510 F. Supp. 3d 108, 123 (S.D.N.Y. 2020) (cleaned up).

Accordingly, Plaintiff shall file a status letter stating their progress in effecting service on Defendant by January 9, 2023.

SO ORDERED.

Dated: December 6, 2022  
New York, New York

A handwritten signature in black ink, reading "Vernon Broderick". The signature is written in a cursive, flowing style. The first name "Vernon" is written in a larger, more prominent script, and "Broderick" follows in a similar but slightly smaller script. The signature is positioned above a horizontal line.

VERNON S. BRODERICK  
United States District Judge